

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD
ALBERT H. GREENE
CARL C. DAVIS*
CHARLES T. KAPPLER
JOHN H. DOYLE
MILTON C. GRACE*
GEORGE JOHN KETO**
RICHARD N. BAGENSTOS

* NOT A MEMBER OF D.C. BAR
** ALSO A MEMBER OF OHIO BAR

LAW OFFICES
ALVORD AND ALVORD

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N.W.

WASHINGTON, D. C.

20006

13249

OF COUNSEL

JESS LARSON

JOHN L. INGOLDSBY

URBAN A. LESTER

RECORDATION NO.

Filed 1425

SEP 30 1981 10 50 AM

CABLE ADDRESS

"ALVORD"

TELEPHONE

AREA CODE 202

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INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION
September 29, 1981

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, D.C. 20235

Dear Madam:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. §11303 are original and two counterparts each of a Railroad Equipment Lease dated as of April 15, 1981 and Amendment No. 1 to Railroad Equipment Lease dated as of September 25, 1981 (Documents).

A general description of the railroad equipment covered by the Documents is:

Twenty-six (26) 100-ton roller bearing
33,500 gallon non-coiled tank cars
(DOT Classification: 105 A400W) bearing
reporting mark and numbers 605, 608, 609, 614
615, 616, 626, 627, 636, 639, 640, 641, 646,
647, 648, 650, 653, 655, 657, 658, 659, 662,
663, 664, 669 & 674, (all marked LEYX).

The names and addresses of the parties to the Documents are:

Lessor: ITT Industrial Credit Company
P.O. Box 43777
1400 North Central Life Tower
St. Paul, Minnesota 55164

Lessee: Wanda Petroleum Company
P.O. Box 53120
Houston, Texas 77052

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No.

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Date.....

Fee \$.60.00

Ms. Agatha L. Mergenovich
Page 2

9/29/81

The undersigned is agent for the Lessor for the purpose of submitting the Documents for recordation and has knowledge of the matters set forth therein.

Please return the stamped copies of the Documents to the undersigned or to the bearer hereof.

Also enclosed is a remittance in the amount of \$60.00 in payment of the required recordation fees.

Very truly yours,

ALVORD AND ALVORD

By: Charles T. Kappler
Charles T. Kappler

CTK/bp
Enclosures

RAILROAD EQUIPMENT LEASE. SEP 30 1981 - 10 52 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT dated as of April 15, 1981, between **WANDA PETROLEUM COMPANY**, a Texas corporation ("Lessee"), and **ITT INDUSTRIAL CREDIT COMPANY**, a Nevada corporation ("Lessor"),

WHEREAS, Lessee has entered into a purchase order dated October 9, 1979, (the "Purchase Agreement") with ACF Industries, Incorporated, ("Vendor"), wherein Vendor has agreed to manufacture, sell and deliver to Lessee the units of railroad equipment described in Schedule "1" hereto (the "Equipment"); and

WHEREAS, Lessor is entering into a Purchase Order Assignment dated as of the date hereof (the "Assignment") with Lessee and consented to by Vendor, whereby Lessee is assigning its rights to purchase the Equipment under the Purchase Order to Lessor and Vendor therein consents to such assignment; and

WHEREAS, Lessee desires to lease such number of units of the Equipment as are delivered, accepted and settled for under the Purchase Order and Assignment and set forth on Schedule "1" hereof (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby leases the Units to Lessee upon the following terms and conditions:

§ 1. NET LEASE

This Lease is a net lease. Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, including, but not limited to, counterclaims, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity; the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of the Lease. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

§ 2. DELIVERY AND ACCEPTANCE OF UNITS

Lessor hereby appoints Lessee its agent for inspection and acceptance of the Units pursuant to, and in accordance with, the Purchase Order and Assignment. Lessor will cause the Units to be delivered to Lessee at the point within the United States of America at which the Units are delivered to Lessor under the Purchase Order and Assignment. Upon such delivery, Lessee will cause an employee of Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and Lessee shall execute and deliver to Lessor a certificate of acceptance (the "Certificate of Acceptance") in the form of Exhibit "A" hereto, setting forth the entire cost of such Unit(s) including sales tax and freight charges, if any, as evidenced by invoice made and delivered to Lessor from the Vendor (the "Purchase Price"), the rental payment amount and rental payment dates in accordance with § 3 hereof, stating that such Unit has been inspected and accepted on behalf of Lessee and Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and

accepted by Lessee and shall be subject thereafter to all the terms and conditions of the Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Purchase Order and Assignment shall be null and void and ineffective to subject such unit to this Lease.

§ 3. RENTALS

3.1. Amount and Date of Payment. Lessee agrees to pay to Lessor as rental for each Unit subject to this Lease sixty (60) consecutive quarterly payments. The first forty (40) quarterly payments are payable in arrears commencing three (3) months after the date of execution of the Certificate of Acceptance for each Unit so accepted and each sum payment shall be in an amount equal to 3.4661% of the Purchase Price of the Units; the last twenty (20) rental payments shall each be in a sum equal to 3.4661% of the Purchase Price increased or decreased by \$1,004.00 for each 50 basis points by which the Five Year Treasury Constant Maturities interest rate for March, 1991, exceeds or is less than 13.25%; provided, however, for each Unit delivered and accepted after June 30, 1981, the rentals thereafter payable by Lessee in respect of each such Unit shall be increased or decreased by such amount as shall, in the reasonable opinion of Lessor, cause Lessor's after-tax economic yield (computed on the same assumptions, and utilizing the same methods as were utilized by the Lessor in originally evaluating the transaction (unless otherwise provided) contemplated herein) to equal the after-tax economic yield that would have been realized by the Lessor if such Unit had been delivered and accepted prior to June 30, 1981. The rental payment amount and the rental payment dates shall be set forth on the Certificate of Acceptance.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof. If any change in Tax Benefits (as defined in § 16 hereof) as to any Unit(s) is legislated prior to delivery thereof, or is legislated with effect retroactive to delivery thereof, or if any change in Tax Benefits as to any Unit(s) is made by change in income tax regulations, published administrative interpretations or decisions, or judicial decisions which are both published and effective prior to the delivery of the Unit(s), then the rental rate specified above for such Unit(s) (and the Casualty Value percentages set forth in the Schedule hereto) shall be increased or decreased as necessary so as to preserve Lessor's after tax rate of return at the same level as if such Tax Benefits had not been changed.

All such rentals and other amounts payable hereunder shall be paid to Lessor by wire transfer of immediately available funds by 11:00 A.M. Central Standard Time on the day such rental or other sum is due to Lessor's account at Northwestern National Bank of St. Paul, Minnesota, Account #20-27-442, Attention: Jean Staricha, or in such other manner as Lessor may from time to time designate in writing.

3.2. Payments on Nonbusiness Days. If any of the rental payment dates referred to in § 3.1 above is not a business day, the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in St. Paul, Minnesota, are authorized or obligated to remain closed.

§ 4. TERM OF LEASE

The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 11, 14, 16 and 17 hereof) shall survive the expiration of the term of this Lease, unless otherwise discharged.

§ 5. IDENTIFICATION MARKS

Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule "1" hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "TTT INDUSTRIAL CREDIT COMPANY, OWNER AND LESSOR", or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's title to and interest in such Unit and the rights of Lessor under this Lease. Lessee will not place any such Unit in operation or exercise any control or dominion over

the same until such words shall have been so marked and will replace promptly and such markings which may be removed, defaced or destroyed. Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Lessor and duly filed, recorded and deposited by Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) Lessee shall have furnished Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates.

Except as provided in the preceding paragraph, Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. TAXES; ASSESSMENTS & LICENSES

Lessee shall file all necessary returns and pay when due all sales taxes, use taxes, excise taxes, personal property taxes, franchise taxes, gross receipt taxes, assessments, ad valorem taxes, stamp and documentary taxes, and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Lessor, Lessee or others, on or relating to the Units of Equipment or the use, ownership, registration, rental shipment, transportation, delivery or operation thereof, other than federal, state or local taxes measured solely by the net income of the Lessor on or relating to this Lease, except as provided in § 16 hereof ("Impositions"). Upon demand, Lessee shall reimburse Lessor for any such Imposition which Lessor may be compelled to pay in connection with the Equipment. The amount which Lessee shall be required to pay hereunder shall be an amount sufficient to restore Lessor to the same net after tax position that Lessor would have been in had such Imposition not been imposed.

§ 7. MAINTENANCE; CASUALTY OCCURRENCES; INSURANCE

7.1. **Maintenance.** Lessee at its own expense will maintain and service each Unit (including any parts installed or replacements made to any Unit and considered an Addition, as defined in § 9.2 hereof, hereunder) and comply with a preventive maintenance schedule consistent with the manufacturer's preventive maintenance schedule. Lessee agrees to test, repair and overhaul each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, (c) eligible for railroad interchange in accordance with the interchange rules of the American Association of Railroads, and, (d) at least at a level of maintenance comparable to that used on all other owned or leased equipment in Lessee's fleet similar to the Units. In no event shall any Unit be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof or as of any future date, if more frequent, by Lessee for similar equipment. Lessee agrees to keep records and logs that are customarily kept in the railroad industry for maintenance performed on the Units.

7.2. **Definition of Casualty Occurrence; Payments.** In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government or any other governmental authority for a stated period which shall exceed the then remaining term of this Lease, or by any governmental entity resulting in loss of possession by Lessee for a period of 90 consecutive days during the term hereof (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, Lessee shall promptly and fully notify Lessor with respect thereto. On the rental payment date next succeeding such notice Lessee shall pay to Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as defined in § 7.3 hereof) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, or complete destruction of such Unit) Lessor shall be entitled to recover possession of such Unit and Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

7.3. **Amount of Casualty Value.** The "Casualty Value" of each Unit as of the payment date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date. Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the term hereof and before such Unit shall have

been returned in the manner provided in § 14 hereof, Lessee shall promptly and fully notify Lessor with respect thereto and pay to Lessor an amount equal to the Casualty Value of such Unit, which shall be 20% of the Purchase Price of such Unit. Upon the making of any such payment by Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), Lessor shall be entitled to recover possession of such Unit.

7.4. Lessee Agent for Disposal. Lessor hereby appoints Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof at the best price obtainable on an "as is, where is" basis. Provided that Lessee has previously paid the Casualty Value to Lessor, Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to Lessor.

7.5. Requisition by United States Government. In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or any political subdivision thereof (the "Government") of any Unit during the term of this Lease, all of Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, Lessee shall be obligated to return such Unit to Lessor pursuant to § 11 or § 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but Lessee shall in all other respects comply with the provisions of said § 11 or § 14, as the case may be, with respect to such Unit. All payments received by Lessor or Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; all payments received by Lessor or Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, Lessor.

7.6. No Release. Except as hereinabove in this § 7 provided, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by Lessee hereunder.

7.7. Insurance To Be Maintained. Lessee will, at all times prior to the return of the Equipment to Lessor, at its own expense, cause to be carried and maintained property insurance in at least an amount equal to the higher of Casualty Value or the replacement value of the Equipment, public liability insurance in an amount not less than \$50,000,000, and any other type of catastrophic insurance with respect of the Units, in at least the amounts and against risks customarily insured against by companies or persons in respect of similar equipment or use thereof, and, in any event, at least comparable in amounts and against risks customarily insured against by Lessee in respect of similar equipment owned or leased by it. Any policies of public liability insurance and catastrophic insurance carried in accordance with this paragraph shall name Lessor as an additional insured; any policies of property insurance shall name Lessor as loss payee as its interests may appear. Each insurer shall agree, by endorsement upon the policy or policies issued by it, that it will give Lessor at least thirty (30) days prior written notice before the policy or policies in question shall be altered or cancelled, and that no act of any person other than the Lessor shall affect Lessor's right to recover under such policy or policies. Lessee shall give Lessor at least thirty (30) days' prior written notice of any changes proposed to be made to any such policies of insurance and of the expiration of any such policies. Lessee shall deliver or cause to be delivered to Lessor evidence of such coverage, in a form satisfactory to Lessor, on the date of first delivery of the Unit(s) and on each anniversary thereof until expiration of the Lease term. If Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, Lessor shall, subject to Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by Lessee and any balance of such proceeds or condemnation payments shall remain the property of Lessor.

All insurance proceeds received by Lessor from Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to Lessee upon proof satisfactory to Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. REPORTS, INSPECTION & NOTIFICATION

On or before April 30 in each year, commencing with the calendar year 1982, Lessee will furnish to Lessor an accurate statement (i) setting forth as of the preceding December 31, if applicable, the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as Lessor may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced, and (iii) setting forth the exact location as of that date of each of the Units. Lessor shall have the right by its agents, to inspect the Units and Lessee's records with respect thereto at such reasonable times as Lessor may request during the continuance of this Lease.

§ 9. DISCLAIMER OF WARRANTIES; COMPLIANCE WITH LAWS & RULES; INDEMNIFICATION

9.1. **Disclaimer of Warranties.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO LESSEE HEREUNDER, AND LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO LESSEE OR OTHERWISE, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee but Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of Lessor and/or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have against the Vendor; provided, however, that if at any time an Event of Default shall have occurred and be continuing, Lessor may assert and enforce, at Lessee's sole cost and expense, such claims and rights. Lessor shall have no responsibility or liability to Lessee or any other person with respect to, without limitation, any of the following: (1) Any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the ownership use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between Lessee and Lessor that the Units described therein are in all the foregoing respects satisfactory to Lessee, and Lessee will not assert any claim of any nature whatsoever against Lessor based on any of the foregoing matters.

9.2. **Compliance with Laws and Rules.** Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any powers or jurisdiction over the Units and with all other applicable interchange rules, to the extent that such laws and rules affect the title, operation, use or condition of the Units, and in the event that, prior to the expiration of this Lease such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, Lessee will conform therewith at its own expense.

Lessee, with the prior written consent of Lessor, at its own cost and expense, may furnish other additions, modifications and improvements (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the United States Department of Transportation, the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (collectively "Additions") to the Units as Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such

Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in Lessor in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part; (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the provisions of § 7.1 hereof or the terms of the first paragraph of this § 9.2; or (iii) such Part cannot be readily removed from the Unit to which it relates without causing material damage to the Unit. In all other cases, if no Event of Default or event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in Lessee and may be removed by Lessee at any time during the term of this Lease and prior to the return of the Units to Lessor pursuant to § 14 hereof. The term "Part" for the purposes of this paragraph shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

9.3. Indemnification. Lessee agrees to indemnify, protect and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims (including, without limitation, claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default or an Event of Default under this Lease, or any sublease entered into pursuant to § 12 hereunder, or the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 14 of this Lease; provided, however, that the foregoing indemnification shall not be deemed to operate as a guarantee of the residual value of any Unit. The amount Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to Lessor sufficient to restore Lessor to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had the liability or expense indemnified against not been incurred.

Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

Lessee agrees to prepare and deliver to Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of Lessor) any and all reports (other than tax returns) to be filed by Lessor with any Federal, state or other regulatory authority by reason of the ownership by Lessor of the Units or the leasing thereof to Lessee.

§ 10. DEFAULT

10.1. Events of Default; Remedies: If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) Lessee shall fail to pay all or any portion of any installment of rental or other payment due hereunder when and as the same shall become due and payable;

(B) any representation or warranty made in this Lease, or in any report, agreement, certificate, financial statement or other statement furnished pursuant to the provisions of this Lease or otherwise, shall prove to have been false or misleading in any material respect as of the date of which the same was made;

(C) Lessee shall fail to duly observe or perform any covenant, condition or agreement made by it hereunder or under any other agreement between Lessor and Lessee, and such breach shall continue for a period of ten (10) days;

(D) a judgment for a payment of money in excess of \$100,000.00 shall be rendered against Lessee or Guarantor and shall remain undischarged for a period of thirty (30) days during which period execution shall not be effectively stayed;

(E) any substantial part of Lessee's or Guarantor's property should be subject to any levy, seizure, assignment, attachment, application or sale for or by any creditor or governmental agency;

(F) Lessee shall transfer, encumber, part with possession, assign or sublet (except as expressly permitted by the provisions hereof) any of the Units or its interest hereunder;

(G) Lessee or Guarantor shall admit in writing its inability to pay its debts as they become due or is not paying its debts or shall commit an act of bankruptcy within the meaning of the Bankruptcy Code or bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings shall be instituted by or against Lessee or all or any part of its property under the Bankruptcy Code or other law of the United States or of any state or other competent jurisdiction and, if against Lessee or Guarantor, it shall consent thereto or shall fail to cause the same to be dismissed within sixty (60) days; or

(H) any indebtedness of Lessee to Lessor, to any affiliate or subsidiary corporation of Lessor or to any corporation having a direct or indirect interest in Lessor or in which Lessor has a direct or indirect interest, under any other lease or for borrowed money or on account of the deferred purchase price of property, shall be accelerated as a result of a default by Lessee, or the obligee with respect to such indebtedness shall exercise any other remedy it may have as a result of such default:

Then, in any such case, Lessor, at its option, may:

(A) Proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(B) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as herein provided; and thereupon Lessee, if so requested by Lessor, shall at Lessee's expense, promptly return possession of such Units to Lessor in the condition required herein as if such Units were being returned upon expiration of the Lease term, or Lessor may by its agents or otherwise enter upon the premises of Lessee or other premises where any of the Units may be and take possession, without demand or notice and without court order or legal process, of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purposes whatsoever and without any duty to account to Lessee for such action or inaction or for any proceeds arising therefrom; Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rent period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee as liquidated damages for loss of the bargain and not as a penalty: (i) An amount equal to the excess, if any, of, at Lessor's sole discretion, either the Casualty Value as of the rental payment date on or next preceding the date of termination or the present value of all remaining rents due under this Lease, over the amount Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event Lessor shall have sold any Unit, Lessor, in lieu of collecting any amounts payable to Lessor by Lessee pursuant to the preceding clause of this part (B) with respect to such Unit, may, if it shall so elect, demand that Lessee pay Lessor and Lessee shall pay to Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of, at Lessor's option, either the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination or the present value of the remaining rent, over the net proceeds of such sale and (ii) an amount which, after deduction of all taxes required to be paid by Lessor and in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority, shall, in the reasonable opinion of Lessor, cause Lessor's net after-tax yield and net after-tax earnings to be the same as such net after-tax yield and net after-tax earnings would have been had Lessee not defaulted hereunder. All such present values shall be determined on the basis of a ten percent (10%) per annum discount compounded semiannually from the respective dates upon which the rents would have been payable hereunder had this Lease not been terminated.

In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

10.2. **Remedies not Exclusive; Waiver.** The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by Lessee or on its behalf.

10.3. **Failure to Exercise Rights is not Waiver.** The failure of Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. RETURN OF UNITS UPON DEFAULT

11.1. **Return of Units.** If this Lease shall terminate pursuant to § 10 hereof, Lessor may, without notice or process of law, take or cause to be taken by its agent or agents, immediate possession of each of the Units, or one or more of the Units and may remove the same from possession and use of Lessee or any other person and for such purpose may enter upon the premises of Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any available trackage and other facilities or means of Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, Lessee shall deliver to Lessor all logs, manuals, data and any other records required to be maintained with respect to the Units and shall forthwith deliver possession of the Units to Lessor. Each Unit so delivered shall (i) be in the same operating order, repair and condition as when originally delivered to Lessee, ordinary wear and tear and modifications, if any, permitted by this Lease excepted and in accordance with § 7.1 of the Lease, and (ii) meet standards then in effect under the interchange rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to Lessor as above required, Lessee shall, at its own cost, expense and risk:

(A) Forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed place such Units upon such storage tracks or other place as Lessor reasonably may designate;

(B) permit Lessor to store such Units on such tracks or at such place for up to twelve (12) months at the risk of Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by Lessor; and

(C) transport the same to such place, and in such manner, as directed by Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. During any storage period, Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair and will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within sixty (60) days after such termination, Lessee shall, in addition, pay to Lessor for each day after such termination and up to the date such Units are so stored an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is the Penalty Rate (as defined

in § 17 hereof) and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day, exceeds the actual earnings received by Lessor on such unit for each such day, if any; such payment shall not affect the obligation of Lessee to redeliver the Units pursuant to the first sentence of this paragraph. Lessee shall also forthwith deliver to Lessor all logs, manuals, data and other records required to be maintained under § 7.1 hereof with respect to the Units.

11.2. **Lessor Appointed Agent of Lessee.** Without in any way limiting the obligation of Lessee under the foregoing provisions of this § 11, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to Lessor to demand and take possession of such Unit in the name and on behalf of Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. ASSIGNMENT; POSSESSION & USE

This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee, but Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. In such case, all the rights of Lessor hereunder (including, but not limited to, the rentals payable under this Lease) shall inure to the benefit of Lessor's assigns. Lessee shall not assert against Assignee any defense, counterclaim or offset that Lessee may have against Lessor. Any such assignment or any security interest granted by Lessor in the Equipment shall be subject to Lessee's rights hereunder, including the right of quiet enjoyment.

Lessee shall not assign, whether by operation of law or otherwise, pledge or hypothecate this Lease in whole or in part, nor any interest therein, nor shall Lessee sublet, lend or part with possession of any Unit without the prior written consent of Lessor.

Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against Lessor not related to the ownership or leasing of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of Lessor or Lessee therein; except that this covenant will not be breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinion of Lessor, adversely affect the title, property or rights of Lessor hereunder.

Lessee shall use the Units of Equipment solely in the conduct of its business, in a manner and for the use contemplated by the manufacturer thereof and in compliance with all laws, rules and regulations of every governmental authorities, having jurisdiction over the Equipment and with the provisions of all policies of insurance carried by Lessee pursuant to Section 7.7 hereof. Lessee agrees each Unit of Equipment shall be located within the continental United States during at least ninety percent (90%) of each year during the Lease term with the use and location being no more than ten percent (10%) of any year of the Lease term in Mexico and Canada combined.

§ 13. RENEWAL TERM; RIGHT OF FIRST OFFER

A) Provided that this Lease has not been earlier terminated and provided that no default or Event of Default has occurred and is continuing hereunder, upon the expiration of the Lease term or renewal term, as the case may be, Lessee shall have the option to extend the term of this Lease at a then current Fair Market Rental in respect of all, but not less than all, of the Units of Equipment, for one additional five (5) year renewal term, or, in the event the Lease term has already been extended to include a five (5) year renewal term, for an additional one (1) year renewal term, which commences on the scheduled expiration of the immediately preceding Lease term or Renewal term. Not less than eighteen (18) months prior to the end of the applicable Lease term or Renewal term, Lessee may indicate by written notification to Lessor, Lessee's election to exercise its renewal option set forth above. Such election shall be irrevocable. All of the provisions of this Lease, other than the rentals as revised hereunder, shall be applicable during each renewal term.

B) If Lessor shall elect to sell the Units of Equipment at the expiration of the Lease term, or, if the term of the Lease has been extended, any renewal term, and provided no Event of Default has occurred, Lessor shall furnish Lessee with written notice thereof and of the price at which Lessor elects to sell such Units not less than two (2) months prior to the later of the expiration of such Lease term or such renewal term or such other proposed date of sale. (Such date of expiration or proposed sale is hereinafter referred to as the "Sale Date"). Following receipt of such notice, the Lessee, provided that no Event of Default or Default shall have occurred, shall have the right to purchase all, but not less than all, of the Units of Equipment on the Sale Date for an amount equal to such price as specified by Lessor. Such right shall expire thirty (30) days after Lessee receives the aforesaid notice of Lessor's intention to sell the Equipment, unless Lessor shall have received written notice of Lessee's election to purchase hereunder, within such thirty (30) day period. Thereafter, if such right is not exercised by Lessee, Lessor shall be under no obligation to sell the Equipment to the Lessee under this Section 13(b). An election to purchase the Units pursuant to this Section 13(b) shall be irrevocable. Following such notice Lessor and Lessee agree to purchase all the Units of Equipment for said amount at the expiration of the Lease term or renewal term, if applicable, on an "as-is, where-is" basis.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value which would be obtained in an arm's-length transaction between an informed and willing lessee, (other than a lessee currently in possession), and an informed and willing seller or lessor under no compulsion to lease, and, in such determination, costs of removal from the location of current use shall not be a deduction from such Fair Market Rental, but there shall be excluded any value attributable to additions, modifications and improvements which Lessee is entitled to remove pursuant to § 9 hereof.

If after forty-five (45) days from the giving of notice by Lessee of Lessee's election to renew the Lease term as provided in this § 13, Lessor and Lessee are unable to agree upon a determination of Fair Market Rental, the Fair Market Rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Rental by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within twenty (20) business days after such notice is given, each party shall appoint an independent appraiser within twenty-five (25) business days after such notice is given, and the two appraisers so appointed shall within thirty-five (35) business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within thirty-five (35) business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by an appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental, within ninety (90) days after his/her or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by Lessee and Lessor.

§ 14. RETURN OF UNITS UPON EXPIRATION OF LEASE TERM

On the expiration of the Lease term or renewal thereof, with respect to any Unit which Lessee does not purchase pursuant to § 13, Lessee will, at its own cost and expense, at the request of Lessor, deliver possession of such Unit to Lessor upon such storage tracks by causing the Units to be stored as Lessor may designate, or in the absence of Lessor's designation, on such lines of Lessee as Lessee may designate, and permit Lessor to store such Unit on such tracks for a period not exceeding six (6) months and transport the same, at any time within such six (6) month period, to any reasonable place as directed by Lessor, all at the expense and risk of Lessee. During any such storage period Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same. Each Unit returned to Lessor pursuant to this § 14

shall (i) be in the same operating order, repair and condition as when originally delivered to Lessee, ordinary wear and tear excepted, and in accordance with § 7.1 of this Lease, and (ii) except for additions, modifications and improvements which Lessee is entitled to remove under the provisions of § 9 of this Lease, meet all operating and condition standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction. Lessee shall also forthwith deliver to Lessor all logs, manuals, data and other records required to be maintained under § 7.1 hereof with respect to the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within sixty (60) days after such termination, Lessee shall, in addition, pay to Lessor for each day after such termination a sum equal to the amount, if any, by which the product of (i) a fraction the numerator of which is the Penalty Rate (as defined in § 17 hereof) and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by Lessor on such Unit for each such day, if any.

§ 15. RECORDING

Lessee, at its own expense, will cause this Lease and any assignment hereof, if applicable, to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada and properly registered or recorded in Mexico. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required or requested by Lessor) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to its satisfaction, of Lessor's interest in the Units, or for the purpose of carrying out the intention of this Lease, and Lessee will promptly furnish to Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor. This Lease shall be filed with the Interstate Commerce Commission, the proper Mexican authorities and deposited with the Registrar General of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 16. INCOME TAX INDEMNIFICATION

(A) This Lease is to be entered into on the basis of the following assumptions (the "Assumptions"): (i) Lessor shall be entitled to such deductions, credits and other benefits as are provided to an owner of property including, without limitation the deduction for the most accelerated method of depreciation on the Units available under the Internal Revenue Code of 1954, as amended, (the "Code") and the investment tax credit as provided in the Code in the amount of ten percent (10%) of the Purchase Price (the "Tax Benefits"); (ii) the Units are assets described in the Asset Guideline Class No. 00.25; (iii) when delivered and accepted under this Lease, the Units will constitute "new Section 38 property" and will not have been used by any person so as to preclude "the original use of such property" from commencing with the Lessor within the meaning of Sections 48(b) and 167(c)(2) of the Code; (iv) at all time during the Lease term, the Units will constitute "Section 38 property", eligible for the depreciation deduction under the Code; (v) at the time Lessor becomes the owner of the Units and throughout the Lease term, Lessee will neither have furnished any funds for the cost of the Units nor have any investment in such Units or any portion thereof; and (vi) the rentals and any other amounts received by the Lessor pursuant to this Lease constitute "U.S. Source Income" under the Code.

(B) If, at any time, by reason of (i) the inaccuracy in law or in fact of any of the Assumptions set forth in Paragraph (A) of this Section, (ii) the inaccuracy of any statement in any letter or document furnished to Lessor by or on behalf of Lessee in connection with the transaction contemplated by this Lease, or (iii) an act, failure to act or omission on the part of Lessee, Lessor shall (x) lose, shall not have or shall lose the right to claim, or there shall be disallowed or recaptured with respect to Lessor, all or any portion of the Tax Benefits, (y) be required to include in its gross income for tax purposes an amount greater than the amount specified to be payable under the Lease on

the dates due hereunder, or (z) lose the benefit of, not have, lose the right to claim, or suffer a disallowance of, any foreign tax credits, (each such event in (x), (y) or (z) set forth above, hereinafter referred to as the "Loss"), then Lessee shall promptly pay to Lessor as supplemental rental hereunder an amount which, in Lessor's opinion, after deduction of all Federal, state and local taxes required to be paid by Lessor in respect of receipt thereof, will cause Lessor's net after-tax rate of return over the term of this Lease to equal the net after-tax rate of return that would have been available to Lessor had such Loss not occurred (such amount to include any penalties and interest payable by Lessor to the taxing authority) or, in the event the Lease has expired or otherwise terminated, Lessee shall forthwith pay Lessor such amount in a lump sum payment.

(C) A Loss shall be deemed to have taken place upon the earliest of (i) the occurrence of any event (such as a disposition or change in the use of the Units) which will cause such Loss, (ii) the payment by the Lessor to the appropriate taxing authority of the tax increase resulting from such Loss, (iii) receipt by Lessor from the appropriate taxing authority of any notice of proposed deficiency relating to such Loss, or (iv) the adjustment of the tax return of Lessor to reflect such Loss.

(D) All of the Lessor's rights and privileges arising from the indemnities contained in this Section shall survive the expiration or other termination of this Lease and such indemnities are expressly made for the benefit of, and shall be enforceable by the Lessor, its successors and assigns.

§ 17. INTEREST ON OVERDUE RENTALS

In the event that Lessee shall be in default in the payment of any sum due under this Lease, Lessee shall pay to Lessor a late charge as an additional source and overhead charge in the amount of ten percent (10%) of any such unpaid amounts. In addition, any nonpayment of rentals and other obligations due hereunder shall also result in the obligation on the part of Lessee promptly to pay, to the extent legally enforceable, interest at a rate per annum (the "Penalty Rate") equal to the higher of (i) 15% or (ii) 4% above the "prime rate" of the Chase Manhattan Bank, National Association, in effect from time to time, per annum based on a 360 day year, on the overdue rentals and other obligations for the period of time during which they are overdue or, if such rate(s) are not legally enforceable, such maximum lesser amount as may be legally enforceable.

§ 18. LESSEE'S REPRESENTATIONS

Lessee represents and agrees that:

(A) It has the full power, authority and legal right to enter into and perform this Lease and the execution, delivery and performance of this Lease have been duly authorized by all necessary corporate or other legal action on the part of Lessee, will not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of Lessee, and will not contravene or be inconsistent with any law, governmental rule, regulation or order binding on Lessee (or the Certificate of Incorporation or By-Laws of Lessee) or contravene the provisions of, or constitute a default under, or result in the creation of any lien or encumbrance upon the property of Lessee under any indenture, mortgage, contract or other agreement to which Lessee or any subsidiary or affiliate is a party, or by which any of them may be bound or affected;

(B) all consents and approvals of, the giving of notice to, registration with, and the taking of any action in respect of any federal, state or foreign governmental authority, necessary, if at all, to permit the transactions contemplated by this Lease have been taken;

(C) This Lease constitutes a legal, valid and binding obligation of Lessee enforceable against Lessee in accordance with the terms hereof;

(D) The Guaranty constitutes a legal, valid and binding obligation, of the Guarantor enforceable against the Guarantor in accordance with the terms thereof;

(E) There are no pending or threatened actions or proceedings before any court or administrative agency that will materially adversely affect the condition, business or operations of Lessee or any of its subsidiaries or affiliates or the ability of Lessee to perform its obligations under this Lease;

(F) That the transactions contemplated by this Lease will raise no presumption of fraud as against and will be effective against all creditors of Lessee under applicable

state and federal laws, including, without limitation, laws relating to fraudulent conveyances or bulk transfers;

(G) Lessee has furnished to Lessor Lessee's annual report to its shareholders for 1980, consolidated balance sheets of Lessee as of December 31, 1979 and 1980, related consolidated statements of income, changes in financial position and retained income and a consolidated balance sheet as of March 31, 1980 and 1981, together with the related consolidated statements of income and retained income for the three (3) month periods then ended. Such consolidated financial statements are in accordance with the books and records of Lessee and have been prepared in accordance with generally accepted accounting principles. These principles have been applied on a consistent basis throughout the periods covered thereby. The financial statements present fairly the financial condition of Lessee at such dates and the results of its operations for such periods. There has not been any material adverse change in the condition, financial or otherwise, of Lessee since December 31, 1980;

(H) Lessee is not in default in the payment of principal of or interest on any indebtedness for borrowed money or in default under any instruments or agreements under or subject to which any indebtedness for borrowed money has been issued or in default under any long-term rental obligation under which Lessee is the lessee, and no event has occurred and is continuing under the provisions of any such instrument or agreement which, with the lapse of time or the giving of notice or both, would constitute an event of default thereunder, other than defaults which would not have a material adverse effect on the Lessee's ability to perform its obligations under this Lease;

(I) Prior to the delivery and acceptance of any Unit of Equipment under the Lease, the Lease will have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, with the proper Mexican authorities and, within twenty-one (21) days from the execution thereof, deposited with the Registrar General of Canada (and provision made for publication of notice of such deposit in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada;

(J) The Equipment will be used in interstate commerce;

(K) The Lessor will, not by virtue of the transaction contemplated by this Lease, be required to obtain any authorization or approval from the Interstate Commerce Commission or any other Federal, state or local governmental body or authority;

(L) Lessee has filed all foreign, Federal, state and local tax returns which (to its knowledge) are required to be filed, and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and which in the aggregate do not involve material amounts;

(M) Lessee has all patents, patent rights, licenses, trademarks, trademark rights, trade names, trade name rights and copyrights which Lessee considers necessary to the conduct of its business as presently operated, or proposed to be operated; and

(N) Lessee shall provide Lessor with an opinion of counsel satisfactory to Lessor with respect to the foregoing matters and such other matters as Lessor shall reasonably request.

§ 19. CONDITIONS OF LESSOR'S OBLIGATIONS

The obligations of Lessor to accept each Unit from the Vendor and to lease the Units to Lessee are subject to the fulfillment to the reasonable satisfaction of Lessor, on or prior to the date of delivery and acceptance by the Lessee of the first Unit (unless otherwise stated) of the following conditions:

(A) The following documents shall have been duly authorized, executed and delivered to Lessor by the respective party or parties thereto, and shall be in full force and effect:

(i) The Purchase Order and Assignment;

(ii) this Lease;

(iii) the Guaranty in the form attached hereto as Exhibit "B";

(iv) an incumbency certificate and board resolution of the Lessee as to the person or persons authorized to execute and deliver this Lease, the Purchase Agreement,

the Assignment, the Certificate of Acceptance and any other documents to be executed on behalf of the Lessee in connection with the transactions contemplated hereby;

(v) an incumbency certificate and board resolution of the Guarantor as to the person or persons authorized to execute and deliver the Guaranty;

(vi) Lessee's independent insurance broker's endorsement and binder or certificate and other evidence, in form and substance reasonably satisfactory to Lessor as to the due compliance with the terms of § 7.7 of the Lease;

(vii) a bill of sale for all the Units satisfactory to Lessor in the form of Exhibit "C", executed by the Manufacturer in favor of Lessor;

(viii) an invoice from the Manufacturer to Lessor in form and substance satisfactory to Lessor specifying the purchase price for all the Units payable to the Manufacturer;

(ix) the Certificate of Acceptance in the form of Exhibit "A" hereto;

(x) a report prepared by an independent appraiser in form and substance satisfactory to Lessor which states that, as of a recent date, the estimated fair market value of the Units at the end of the Lease term (determined (a) without including in such value any increase or decrease for inflation or deflation during the Lease term and (b) after subtracting from such value the cost, if any, to Lessor for removal and delivery of possession of the Units to Lessor at the end of the Lease term) will be at least equal to twenty percent (20%) of the Purchase Price, and the estimated useful life of the Units will be at least one hundred twenty-five percent (125%) of the Lease term.

(xi) Lessee's financial statements for the period ended December 31, 1980, it being a condition of Lessor's obligations that there have been no material change in these financial statements from the preliminary statements provided Lessor on December 31, 1980;

(xii) releases executed by any party holding a lien on or security interest in the Units or any part thereof, if any; and

(xiii) opinions of counsel for Lessee as to the matters set forth in Section 18(A)-(L).

(B) There shall have been no material adverse change in the financial condition of Lessee prior to the date of delivery and acceptance of such Unit by the Lessee from that shown on any preliminary or audited financial statements delivered to Lessor.

(C) A Uniform Commercial Code precautionary financing statement or statements covering the Units and any associated equipment shall have been executed and delivered by Lessee, as lessee, and by Lessor, as lessor, and such financing statement or statements shall have been duly filed in all places, and all other actions shall have been taken, which, in the opinion of Lessor are necessary to protect its ownership interest in the Units. This Lease has been filed with the Interstate Commerce Commission pursuant to U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of Lessor therein in any state of the United States of America or the District of Columbia.

(D) On the Closing Date of each Unit the following statements shall be true, and Lessor shall have received evidence reasonably satisfactory to it to the effect that:

(i) Lessor has good and marketable title to the Units, free and clear of all liens and encumbrances;

(ii) the representations and warranties of the Lessee contained in Section 18 hereof shall be true and accurate on and as of the date of delivery of such Unit as though made on and as of such date;

(iii) nothing shall have occurred which will materially and adversely affect the ability of Lessee to carry on its business and to perform its obligations under this Lease; and

(iv) no event shall have occurred and be continuing, or would result from the purchase or lease of the Units, which constitutes an Event of Default hereunder or would constitute an Event of Default hereunder but for the requirement that notice be given or time elapse or both.

§ 20. FINANCIAL REPORTS

Lessee will deliver to Lessor: (i) As soon as available and in any event within ninety (90) days after the end of each fiscal year, a certificate signed by the President, any Vice President or the Treasurer of Lessee stating that a review of the activities of Lessee during such year has been made under his supervision with a view to determining whether Lessee has kept, observed, performed and fulfilled all its obligations under this Lease and that to the best of his knowledge Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained therein, or if any Event of Default shall exist or if an event has occurred and is continuing which, with the giving of notice or the passage of time or both, would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof; (ii) as soon as available and in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each year, copies of the consolidated balance sheet of Lessee as of the end of such quarterly accounting period and copies of the related consolidated statements of income, retained income and changes in financial position of Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail, certified by the Controller or chief financial officer of Lessee, and stating in comparative form and figures for the corresponding date and period in the previous fiscal year; (iii) as soon as available, and in any event within ninety (90) days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the consolidated balance sheet of Lessee as at the end of such fiscal year, and of the related consolidated statements of income, retained income and changes in financial position of Lessee for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by Lessee's independent public accountants; and (iv) as soon as available, a copy of (A) each Annual Report and each report relating to the Equipment submitted to the Interstate Commerce Commission, each report on Form 10-K, Form 10-Q and form 8-K and each registration statement filed with the Securities and Exchange Commission (or any successor agencies to such Commissions) which are required to be filed by Lessee and (B) each proxy statement, financial statement and report that Lessee's ends or makes generally available to any of its security holders. All financial statements delivered pursuant to this Section 20 shall be prepared in accordance with generally accepted accounting principles consistently applied.

§ 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered, telexed or mailed first class, postage prepaid, address as follows:

(A) If to Lessor, to ITT Industrial Credit Company, P.O. Box 43777, 1400 North Central Life Tower, St. Paul, Minnesota 55164, Attention of Vice President - Director of Leasing; and

(B) If to Lessee, to Wanda Petroleum Company, P.O. Box 53120, Houston, Texas, 77052, Attention of Glenn Arnold.

§ 22. MISCELLANEOUS

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or enforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supercedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for Lessor and Lessee. Nothing in this Lease shall be deemed to create any right in any person not a party hereto, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

If Lessee fails to perform or comply with any of its agreements contained herein, Lessor may, upon notice to Lessee, itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of Lessor incurred in connection with such performance or compliance, together with interest on such amount at the Penalty Rate (as defined in § 17 hereof) (or such lesser amount as may be legally enforceable) shall be payable by Lessee upon demand. No such performance or compliance by Lessor shall be deemed a waiver of the rights and remedies of Lessor against Lessee hereunder.

Wherever the context permits, Lessee's representations, warranties and covenants hereunder shall survive the delivery and return of the Units leased hereunder.

§ 23. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to Lessor shall be deemed to be the original and marked as such and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 24. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

§ 25. DEFINITIONS

Whenever the term "Lessor" is used in this Lease, it shall include Lessor and any assignees of Lessor and, where the context so requires (including but not limited to certain of the provisions of § 16 hereof), shall, except for purposes of any assignment of "Lessor's" rights under this Lease, refer only to Lessor or such assignees of Lessor.

§ 26. EXPENSES

Lessee shall be responsible for any filing and registration fees associated with recording the Lease and titling the Units, for any fees and expenses incurred by Lessor in protecting Lessor's ownership interest in the Units or obtaining any regulatory approvals, and for any legal expenses and fees associated with any expert opinions required hereby that Lessee may incur or for which it is obligated to incur under the Lease.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

(Corporate Seal)

Attest:

Jaye Jones
Asst. Secretary
(Corporate Seal)

Attest:

John O'Kelly
Sec.

WANDA PETROLEUM COMPANY

By: H. P. Luckett
President

LAW	<u>mg</u>
INS.	
ENG.	
ACCTG.	
EXEC.	

ITT INDUSTRIAL CREDIT COMPANY

By: W. A. Lumber
Vice President

STATE OF TEXAS)
COUNTY OF HARRIS)

SS:

On this 29 day of June 1981, before me personally appeared H.P. Wickett, to me personally known, who, being by me duly sworn, says that he/she is a President of WANDA PETROLEUM COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jeanie Cornelius
Notary Public

(Notarial Seal)

My Commission expires

7-23-84

STATE OF MINNESOTA)
COUNTY OF)

SS:

On this 30th day of June 1981, before me personally appeared Michael J. Hankey, to me personally known, who, being by me duly sworn, says that he is an authorized officer of ITT INDUSTRIAL CREDIT COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mark W. Lavine
Notary Public

(Notarial Seal)



My Commission expires

SCHEDULE 1

Date of Delivery: June, 1981

Place of Delivery: Pierce Junction, Texas

QUANTITY	DESCRIPTION	LESSEE'S IDENTIFICATION NO. (both inclusive and two serial numbers on each)	PURCHASE PRICE FOR EACH UNIT
39	100 Ton Roller Bearing DOT 105 A400W, 33,500 gallon, non-coiled tank cars		

EXHIBIT B

CASUALTY VALUE SCHEDULE

The Casualty Value of the Equipment shall equal the Purchase Price of such item of Equipment suffering a Casualty Occurrence, multiplied by the percentage shown below as of the Rental Payment Date on or next preceding the date of such Casualty Occurrence.

<u>Rental Payment Date</u>	<u>Percentage</u>
8/81	101.5000
11/81	106.1505
2/82	106.9904
5/82	107.6797
8/82	108.2939
11/82	108.8492
2/83	109.3286
5/83	109.7420
8/83	110.0932
11/83	110.3798
2/84	110.6000
5/84	110.7536
8/84	110.8478
11/84	104.6122
2/85	104.5762
5/85	104.4716
8/85	104.3102
11/85	104.0850
2/86	103.7944
5/86	103.4333
8/86	103.0183
11/86	96.2745
2/87	95.7312
5/87	95.1157
8/87	94.4490
11/87	93.7195
2/88	92.9257
5/88	92.0578
8/88	91.1417
11/88	83.8979
2/89	82.8558
5/89	81.7380
8/89	80.5748
11/89	79.3501
2/90	78.0623
5/90	76.6973
8/90	75.2898
11/90	73.8215
2/91	72.2910
5/91	70.6815
8/91	69.0327
11/91	67.3240
2/92	65.5537
5/92	63.7031
8/92	61.8164
11/92	59.8706
2/93	57.8642
5/93	55.7760
8/93	53.6549
11/93	51.4758
2/94	49.2370
5/94	46.9141
8/94	44.5569
11/94	42.1391
2/95	39.6591
5/95	37.0899
8/95	34.4800
11/95	31.8031
2/96	29.0572

Rental Payment Date

5/96
8/96

Percentage

26.2420
23.4874

Lessee acknowledges receipt of copy hereof.

LESSEE

WANDA PETROLEUM COMPANY

By: John V. Frecker
Title: Senior Vice President

LAW	m.g.
INS.	
ENG.	
ACCTG.	
EXEC.	

EXHIBIT A
to Railroad Equipment Lease
CERTIFICATE OF ACCEPTANCE NO. _____
under

RAILROAD EQUIPMENT LEASE dated as of April 15, 1981, (the Lease) between ITT INDUSTRIAL CREDIT COMPANY, as lessor (the Lessor), and WANDA PETROLEUM COMPANY, as lessee (the Lessee).

1. Units of Equipment

The Lessee hereby certifies that the Units of Equipment set forth and described in Schedule 1 hereto (the Units) (which Schedule includes the amount of the Purchase Price of each such Unit) have been delivered to the location indicated below, inspected by the Lessee, found to be in good order and accepted as Units of Leased Equipment under the Lease, all on the Date of Acceptance set forth below:

Location of Items of Equipment:

Date of Acceptance:

Date of Delivery:

2. Representations by the Lessee

The Lessee hereby represents and warrants to the Lessor that on the date of Acceptance set forth above:

- (1) The Lessee has satisfied or complied with all requirements set forth in any certificate of the Lessee and in the Lease to be satisfied or complied with on or prior to such Date of Acceptance.
- (2) No Default or Event of Default under the Lease has occurred and is continuing on such Date of Acceptance.
- (3) The Lessee has obtained, and there are in full force and effect, such insurance policies with respect to each of the Units as are required to be obtained under the terms of the Lease.
- (4) Each of the Units was new and unused on the Date of Acceptance set forth above.
- (5) There has been no material adverse change in Lessee's financial condition since December 31, 1980.
- (6) Interstate Commerce Commission and Canadian Registrations have been made for each of the Units as provided in Section 15 of the Lease and evidence in a form satisfactory to Lessor has been provided to Lessor.

3. Residual Value and Useful Life of the Items

Lessee is engaged in storing, transporting and distributing natural gas liquids and possesses sufficient experience and knowledge to express the opinion that:

(1) Based on normal usage and normal and proper maintenance, it could be expected that each of the Units will have a durability and useful economic life of not less than 3.75 years after the expiration of the fifteen (15) year lease term provided in the Lease; and

(2) It is reasonable to expect that each of the Units will have a fair market value, net of extraction costs and before taking into account the effect of inflation or deflation, of 20% or more of Lessor's Cost of such Unit at the expiration of the fifteen (15) year lease term provided in the Lease, and that such Unit will be useful and useable to parties other than the Lessee or its affiliates at the expiration of such lease term.

4. Survival of Rights Against Vendor

Nothing contained in this Certificate of Acceptance No. ____ shall in any way diminish or otherwise affect any right the Lessee or Lessor may have with respect to the Units against the Vendor of any such Unit under the Purchase Order or Purchase Order Assignment relating to such Unit.

5. Confirmation of Rentals

Lessee confirms its agreement under the Lease to pay to Lessor for the equipment, subject to adjustments as provided in the Lease, rentals in sixty (60) consecutive quarterly payments, consisting of forty (40) installments, payable commencing on _____, 19____, and payable quarterly thereafter, each installment in the amount of \$ _____, followed by twenty (20) installments payable commencing on _____, 19____, and payable quarterly thereafter each installment in the amount of \$ _____.

WANDA PETROLEUM COMPANY as Lessee

By: _____

Title: _____

Accepted as of the Date of Acceptance
set forth in paragraph 1 above on behalf
of the Lessor:

ITT INDUSTRIAL CREDIT COMPANY as Lessor

By: _____

Title: _____